



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket Nos. 18-122, 21-320; DA 21-1223; FR ID 52434]

Implementation of the Commission's Incremental Reduction Plan for Phase I Accelerated Relocation Payments

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB or Bureau) announces its implementation of the Commission's incremental reduction plan for Phase I Accelerated Relocation Payments (ARP) relating to the ongoing transition of the 3.7 GHz band. On August 4, 2021, as directed by the Commission in the *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification (3.7 GHz Report and Order)*, WTB issued a Public Notice (PN) to seek comment on its proposed approach for calculating an incremental reduction for an eligible space station operator's ARP due to its failure to meet the Phase I Accelerated Relocation Deadline. After reviewing the record, the Bureau adopts the proposals outlined in the *Phase I Incremental Reduction Comment PN* with some clarifications.

DATES: Phase I Accelerated Relocation Certifications are due December 5, 2021.

FOR FURTHER INFORMATION CONTACT: Susan Mort, Wireless Telecommunications Bureau, at Susan.Mort@fcc.gov or 202-418-2429.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice, in GN Docket Nos. 18-122, 21-320; DA 21-1223, released on September 29, 2021. The complete text of this document is available on the Commission's website at <https://www.fcc.gov/document/wtb-announces-phase-i-c-band-incremental-reduction-plan>.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will not send a copy of this document to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted action is an action of particular applicability.

SYNOPSIS

With this document, the Wireless Telecommunications Bureau (WTB or Bureau) announces its implementation of the Commission's incremental reduction plan for Phase I Accelerated Relocation Payments (ARP) relating to the ongoing transition of the 3.7 GHz band. On August 4, 2021 (86 FR 44329, August 12, 2021), as directed by the Commission in the *3.7 GHz Report and Order* (85 FR 22804, April 23, 2020), WTB issued a Public Notice to seek comment on its proposed approach for calculating an incremental reduction for an eligible space station operator's ARP due to its failure to meet the Phase I Accelerated Relocation Deadline. The Bureau received six comments. After reviewing this record, we adopt the proposals outlined in the *Phase I Incremental Reduction Comment PN* (86 FR 44329, August 12, 2021), with certain clarifications described below.

In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band (i.e., 4.0-4.2 GHz). The *3.7 GHz Report and Order* established that new 3.7 GHz Service licensees would reimburse the reasonable, actual

relocation costs of eligible FSS space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band.

The *3.7 GHz Report and Order* established a deadline of December 5, 2025, by which incumbent space station operators were to complete the transition of their operations to the upper 200 megahertz of the band, but it also provided an opportunity for accelerated clearing of the band by allowing eligible space station operators to voluntarily commit to relocate on a two-phased accelerated schedule, with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023. All five eligible space station operators elected to transition on the accelerated schedule. By electing accelerated relocation, the eligible space station operators have, among other things, voluntarily committed to perform all the tasks necessary to enable any incumbent earth station (except those that have elected instead to receive lump sum payments) that receives or sends C-band signals to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band. The *3.7 GHz Report and Order* stated that “[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines.” Once validated, the ARPs will be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).

The *3.7 GHz Report and Order* specified that an “eligible space station operator’s satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline,” and directed WTB to prescribe the form of such Certifications. Further, “the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies.”

The *3.7 GHz Report and Order* also directed that if “credible challenges as to the space station operator’s satisfaction of the relevant deadline are made, the Bureau will issue a public

notice identifying such challenges and will render a final decision as to the validity of the certification no later than 60 days from its filing.” Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.

Following validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice. The Clearinghouse must then disburse the ARP to the eligible space station operator within seven (7) days of receipt. Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline.

The *3.7 GHz Report and Order* directed WTB to: (1) “prescribe the form” of Certifications and any challenges by relevant stakeholders, and (2) establish the process for how such challenges will impact incremental decreases in the ARP. On August 4, 2021, the Bureau issued a Public Notice implementing filing procedures for Phase I Certifications and related challenges. In the *Phase I Incremental Reduction Comment PN*, also released on August 4, 2021, the Bureau sought comment on how different Phase I Certification scenarios would affect both the challenge process and incremental decreases in the ARP.

General Matters. In the *Phase I Incremental Reduction Comment PN*, we sought comment on specific timing scenarios involving credible challenges filed by relevant stakeholders in connection with the ARP certification process. As part of this discussion, WTB also noted the *3.7 GHz Report & Order* directive that “[f]ollowing validation, the Clearinghouse shall promptly notify overlay licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice.” Commenters in response asked the Bureau to define the terms “credible challenge,” “relevant stakeholders,” and “promptly,” which are all terms used by the Commission in the *3.7 GHz Report and Order*. The *Phase I Incremental Reduction Comment PN* did not seek comment on these definitions and we decline to take action on these requests. We believe the Certification and challenge process will be able to proceed without impediment

in the absence of such clarifications and that it is more appropriate to address these questions on a case-by-case basis.

Several commenters also raised matters directly addressed in the *Phase I ARP Certification Procedures PN* (86 FR 44359, August 12, 2021) or otherwise outside the scope of the instant public notice. As these topics were not raised in the *Phase I Incremental Reduction Comment PN*, we do not address them here.

Certification and Incremental Reduction Scenarios. At its outset, the *Phase I Incremental Reduction Comment PN* recognized the two most straightforward Certification and incremental reduction scenarios. First, all Certifications filed without subsequent change—whether by amendment or superseded by a refiled Certification—will not be subject to any incremental decrease in the ARP if the Certification was filed before the Phase I deadline and is ultimately validated. Second, any Certifications filed for the first time after the Phase I deadline and later validated without amendment or refiling will be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order*, using the Certification filing date as the “Date of Completion” for determining the applicable percentage by which the ARP will be reduced. In both situations, the challenge process laid out in the *Phase I ARP Certification Procedures PN* would remain unaffected. No commenters disagreed with these baseline premises, and we adopt this approach.

The Bureau also sought comment on more complex scenarios involving the potential amendment or refiling of Certifications, as well as on how to take into account possible remedial actions and agreements between eligible space station operators and other stakeholders as part of the Certification process. After considering the record, we generally adopt the approach proposed in the *Phase I Incremental Reduction Comment PN*, with certain clarifications described below.

Amending or Refiling a Certification by the Phase I Deadline. In the *3.7 GHz Report and Order*, the Commission stated that it was adopting accelerated relocation rules “to facilitate the

expeditious deployment of next-generation services nationwide across the entire 280 megahertz made available for terrestrial use.” In furtherance of this goal, we concluded in the *Phase I Incremental Reduction Comment PN* and affirm here that eligible space station operators may amend or refile an incomplete or invalid Certification without any incremental reduction in the ARP if, before the Phase I deadline, the eligible space station operator corrects any underlying problems and submits an amended or refiled Certification that has no invalidating infirmities. Such amendment or refiling may be either on the eligible space station operator’s own motion, in response to a challenge, or in response to the Bureau’s determination that the original Certification was invalid. If WTB ultimately determines (before or after the Phase I deadline) that all the underlying problems have been resolved, the certifying space station operator will, in fact, have come into compliance with all the requirements for claiming the ARP by the Phase I deadline, provided the operator had resolved those problems before said deadline and such resolutions were reflected by the filing—also before this deadline—of an amendment or refiled Certification.

T-Mobile agrees with the Bureau’s proposal that, in these circumstances, the amended or refiled Certification should take the place of the original and start a new challenge process. Eutelsat and Verizon support limiting new challenges to matters involving changes to the original Certification, while Intelsat advocates that we consider only “substantial” or “major” amendments or revisions as starting a new comment cycle and review period. Based upon the record, we agree with our initial proposal from the *Phase I Incremental Reduction Comment PN*. New challenges to an amended or refiled Certification will be permitted but must be limited to matters involving changes made to the original Certification (whether the addition of new information, modifications of information that had been included in the original Certification, or the deletion of previously included information). While we agree that limiting the scope of challenges to an amendment or refiling in this way is warranted, we decline to distinguish between different types of substantive amendments or revisions as Intelsat suggests. We did not

seek comment on this issue in the *Phase I Incremental Reduction Comment PN*. Additionally, we note that adopting Intelsat's approach could lead to confusion and disputes in the record over whether an amendment was "substantive" or "major," taking the focus off the Commission's goal for the certification process—to accurately determine, based on the record, whether an operator has fully satisfied its Phase I clearing obligations by December 5, 2021. We reiterate our earlier tentative conclusion that if the Bureau has not already ruled on the original Certification, we may nevertheless consider all points raised during the original challenge cycle to the extent those points may still be relevant to the amended or refiled Certification.

Several commenters also raised timing considerations relative to Certification review by the Bureau. In response, we clarify that where an eligible space station operator either amends or refiles its Certification, the filing date of the amendment or refiled Certification will open a new 30-day window for the identification of any deficiencies by the Bureau in the entire Certification, as amended or refiled. Further, it also triggers a new 60-day window for a final Bureau determination on the validity of the entire Certification, as amended or refiled, where the Bureau identifies any deficiencies in the entire Certification within the new 30-day window. In other words, the amending or refiling of a Certification restarts the clock for Bureau review of that Certification. This clarification conforms with the *3.7 GHz Report and Order*'s directive to the Bureau to "render a final decision as to the validity of the certification no later than 60 days from its filing," because an amendment or refiling will necessarily alter or replace the underlying Certification and otherwise make it impossible to ascertain whether the eligible space station operator had fulfilled its transition responsibilities absent a full review. Indeed, we would risk frustrating the Commission's objective of making an accurate determination on a Certification if we were to conclude, as some satellite operators suggest, that corrections to a Certification or remedial actions made during the 60-day review period would not affect when the date by which a final determination must be made. For instance, if an eligible space station operator were to substantially or entirely replace its Certification fifty-nine (59) days after its original filing and

the Bureau took the position that this action had no effect on the timing of a final determination, then both outside parties and the Bureau would be deprived of the ability to assess the Certification's validity before the Bureau issued a final determination, which we believe would be inconsistent with the Commission's directive in the *3.7 GHz Report and Order*. Eligible space station operators are strongly encouraged to ensure their original filings are complete and conform to the requirements specified in our *Phase I ARP Certification Procedures PN* to avoid the need for any amendments or refiling.

We adopt our proposal that, if WTB decides that the amended or refiled Certification was valid, the eligible space station operator's ARP will be based on the filing date of the amended or refiled Certification. As noted above, where the amended or refiled Certification is submitted before the Phase I deadline and that Certification is found to be valid, there will be no reduction in the ARP.

Amending or Refiling a Certification After the Phase I Deadline. As commenters largely focused on the effects of amending or refiling a Certification before the Phase I deadline of December 5, 2021, the record does not reflect detailed input on similar scenarios occurring after the Phase I deadline. We therefore adopt our proposals from the *Phase I Incremental Reduction Comment PN*, consistent with the clarifications articulated above. Thus, if WTB rejects a Certification filed before the Phase I deadline (whether the original or an amended or refiled Certification), then the eligible space station operator will have to finish any incomplete aspects of the transition and file a new Certification that the Bureau will have to find to be valid before its entitlement to an ARP could be determined. If the filing date of this new, valid Certification falls after the Phase I deadline, then the ARP will be subject to the incremental reduction schedule established by the Commission in the *3.7 GHz Report and Order*, as applicable, based on that Certification's filing date. We establish the same treatment in cases where the Bureau has not yet ruled on a Certification and, after the Phase I deadline, the eligible space station

operator either submits an amended or refiled Certification on its own motion, or in response to a challenge.

Where a Certification is amended or refiled after the Phase I deadline, we establish the same challenge process as where an amended or refiled Certification is filed before the Phase I deadline. Thus, new challenges to the amended or refiled Certification will be permitted but must be filed within 10 days of the filing of the Certification and be limited to matters involving changes made to the original Certification (whether the addition of new information, modifications of information that had been included in the original Certification, or the deletion of previously included information). If the Bureau has not already ruled on the original Certification, we may nevertheless consider all timely filed points raised during the original challenge cycle (even if that cycle ends after the filing of an amended or refiled Certification) to the extent those points may still be relevant to the amended or refiled Certification.

Accounting for Remedial Action by Eligible Space Station Operators. Subject to the provision on agreements below, we affirm that WTB will consider remedial action taken by an eligible space station operator only if said operator has memorialized that action in a Certification (whether amended or refiled). Thus, if WTB issues a final determination rejecting a Certification, the fact that the eligible space station operator has taken remedial action—after filing its Certification but before WTB’s decision—to address the problems in said Certification that had prompted WTB’s rejection will not, in and of itself, invalidate or otherwise affect WTB’s determination. Rather, for such remedial action to be considered, the eligible space station operator will need to submit an amended or refiled Certification reflecting that remedial action. The amended or refiled Certification will initiate a new challenge process as to those aspects that had not yet been subject to the initial challenge process, will be subject to 60 day review by the Bureau, and will, if accepted as valid, establish a new date by which the eligible space station operator’s ARP will be calculated.

Agreements. We adopt our proposal that eligible space station operators and stakeholders (including, but not limited to, incumbent earth station operators) may enter into agreements to resolve any outstanding issues raised in a challenge to a Certification and submit any such agreements to WTB before the Bureau has made a final determination regarding the validity of the Certification without refileing or amending that Certification. For instance, if an eligible space station operator submits a Certification (either before or after the Phase I deadline) that is credibly challenged, and it attempts to address any alleged deficiency before WTB has issued a decision, the eligible space station operator and challenging parties can enter into an agreement(s) to resolve all outstanding issues between those parties and submit this agreement(s) to WTB. If, after review, WTB accepts this agreement(s) as a good faith resolution of issues in the eligible space station operator's Certification, the Bureau will find that the original Certification is valid and dismiss the related outstanding challenges. If such an agreement resolved all outstanding challenges, the Bureau would calculate the ARP as of the date the original Certification was filed. If the agreement, or agreements, entered into by the eligible space station operator and the relevant challenger(s) does not resolve all outstanding issues in an eligible space station operator's Certification, then the Bureau will proceed to make a determination on any outstanding issues not addressed by the agreement or agreements. To the extent the eligible space station operator files an amended Certification before such determination is made, attesting that it has completed the necessary remedial steps on any outstanding issues, then we will calculate the ARP as of the date of the amended Certification (assuming this amended Certification is found valid). While we decline to adopt certain proposals advanced by Eutelsat relating to our review of agreements, we clarify that parties to an agreement may request confidential treatment under § 0.459 of the Commission's rules.

Although we allow eligible space station operators and stakeholders to enter into agreements to resolve issues raised in challenges, to ensure the integrity of the transition process, we affirm our proposal to bar the use of greenmail to reach agreements designed to avoid

incremental reductions. When a challenge against a Certification is withdrawn as the result of an agreement with an eligible space station operator, we will require that the written withdrawal agreement be accompanied by an affidavit from all parties certifying that no parties involved have received or will receive any money or other consideration, or pay any money or other consideration, in excess of legitimate and prudent expenses in exchange for the agreement or withdrawal of the challenge. We otherwise decline to clarify the Commission's greenmail policy as some commenters suggest, finding that the approach we adopt will ensure the integrity of the transition without imposing unnecessary or onerous requirements on the parties to such agreements. We believe it is more appropriate to address specific applications of this policy on a case-by-case basis, and will reject any agreement where we have reason to believe greenmail has changed hands.

Finally, if the eligible space station operator takes remedial action to address any challenges to a filed Certification but does not attempt to negotiate with the challengers or such negotiations fail, WTB will proceed to make a decision based on the information submitted by the eligible space station operator in its Certification (original, amended, or refiled, as applicable).

Federal Communications Commission.

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